Remarks

The present amendment is in response to the Office action dated January 20, 2006, where the Examiner has rejected claims 1 – 58. Reconsideration and allowance of presently pending claims 1 – 58, in view of the following remarks, is respectfully requested.

Double Patenting
Statutory

All pending claims have been provisionally rejected for statutory double patenting as compared to application 09/916,900, now US Patent 7,027,806.

Applicant respectfully traverses the rejection for at least the following reasons. As required in a statutory double-patenting rejection (MPEP §804, page 800-19), the claim scope must be identical. Restrictions or elements present in one claim set and not the other create different claims scopes.

Each currently pending independent claim (1, 28, 29, 58) has at least one element not present in the independent claims issued with 7,027,806. Each of claims 1, 28, 29, and 58 include one or more elements addressing the resizing of code sections. Resizing of code sections is *not* the same as "arranging the first plurality of symbol libraries into a second plurality of code sections" (from claim 1 of the '806 patent) as asserted in the OA. They are functionally independent. The elements taught in the independent '806 claims are those used to unbundled and arrange, in memory, the new code sections that replace previous code sections in an efficient manner. No resizing is needed for these independent claims. For example, in some embodiments of the '806 claim 1 the new code sections are less than or equal to the size of the code section it replaces, and no resizing of the code base carried out.

'806 also has independent claims 28, 29, and 52. In each case, there are embodiments of these claims that fall outside of the independent claims in the present application, where resizing is required. Thus, the claim scope between the present application of the '806 patent is different as to all the independent claims.

The '806 claims include 4 dependent claims that include an element that deals with sizing. Those claims are 25, 26, 50 and 51. Their dependency chains are as follows (claims which include an element with sizing in bold):

1→2→3→4→5→6→7→8→9→10→11→12→13→14→16→17→18→19→20→21→22→**25**→**26**

29→33→34→35→36→37→38→39→40→41→43→44→45→46→47→48→49→**50**→**51**

Each of these dependent claims inherit the elements from all the claims in its dependency chain. In each case, the claim scope of claims 25, 26, 50 and 51 are different than the presently pending claim set.

Claims 25 and 26 eventually depend from claim 1. Claim 1 includes the following: "...arranging the first plurality of symbol libraries into a second plurality of code sections..." In the present application, the independent claims do not have at least this element (there are others as well). There are embodiments within the scope of the claims in the present application that are outside the scope of the claim 1; these would include any code sections where the first plurality of symbol libraries are not arranged into a second plurality of code sections.

Claims 50 and 51 eventually depend from claim 29. Claims 29 includes the following: "...wherein the file system section receives a first patch manager instruction set (PMRTI)..." The presently pending independent claims do not have the require a patch manager instruction set. There are embodiments of code resizing falling within the claims scope of the presently pending claims that do not fall in the claims scope of the claims 50 and 51. Note that is but one of many differences between the claims in '806 and those pending in the present application.

Thus, the claims scope is not the same between the '806 patent and the presently pending claim set. Applicant respectfully believes Applicant has overcome the statutory double-patenting rejection thereby, and requests this rejection be withdrawn.

Double Patenting
Judicial, Provisional

The non-statutory double patenting rejection of claims 1-58 is provisional, as 09/917,026 has not issued and the presently pending application is also still in prosecution. Since it is a provisional rejection while both applications are in prosecution, Applicant respectfully requests to withhold Applicant's response until 09/917,026 issues, or until the present application has otherwise allowable subject matter. At that time, the claims in one or the other application will be in final form so will have the specificity needed to address the provisional rejection.

35 USC §102 Rejections

The pending independent claims (1, 28, 29, and 58) will be discussed before the pending dependent claims. Each of the pending independent claims has been rejected as anticipated by Hutchinson (US Patent 6,449,476). Claims 1, 28 and 29 were also rejected as anticipated by Yoshida (US Patent 6,275,694).

Applicant respectfully traverses the assertion that presently pending claims 1, 28, 29 and 58 are anticipated by Hutchinson for at least the following reasons.

Claims 1, 28, 29, and 58 were rejected using Hutchinson at col. 1 lines 8-11, col. 4 lines 66-67, col. 5 lines 2-10, col. 5 lines 62-65 to col. 6 lines 2-10. To make a successful anticipation rejection, the cited art must show each and every claim element and relationship as the rejected claims (MPEP §2131, 2100-76/77). The cited art discloses the following.

CITED LANGUAGE:

> The present invention is related generally to wireless communication devices, and more particularly, to a system and method for independently downloading features into a memory location of a wireless communication device.

FIG. 2 is a schematic of the programmable memory 116 of an exemplary embodiment of the present invention. The main program is written into a storage block (memory locations) 134 of the programmable memory 116. The bundles FEATURE 1, FEATURE 2, and FEATURE 3 belonging to the set 123 of FIG. 1 and shown as 124, 126 and 128 respectively, are written into other storage blocks of the programmable memory 116. Each bundle, such as FEATURE 1, further includes an identification (ID) 136, one or more pointers 138-140, and a flag 142. An empty storage block 152 allows additional future bundles to be written into the programmable memory 116.

In an exemplary embodiment of the invention, the main program in storage block 134 includes routines to search through the programmable memory 116 to try to find any of the optional features 124, 126, and 128. These routines use known optimization techniques to minimize the time required to search for any given optional feature. Once an optional feature is located, other routines in the main program interact with the optional feature to activate the optional feature. Accordingly, there is no requirement for the main program to initially know the specific memory location of an optional feature. The main program need only have the capability of knowing that an optional feature can be downloaded and to search the programmable memory 116 for the optional feature.

Hutchinson discloses a system divided into the main program and a set of selectable features, where the device has memory usable to store the code for the added or selected feature set. See generally col. 2 lines 34-64, plus Figure 2. Clearly disclosed is a single entity known as the main program, with pointers to code to enable specific additional features. The cites given in the OA (see above) also describe the same architecture: a single main program which is not changed, and a set of loadable feature programs with pointers thereto. Hutchinson discloses a way of allowing downloadable features on cell phones without having to pre-program links to the features (this allows the features to downloaded as needed, rather than all of them all the time).

Presently pending claims 1, 28, 29 and 58 have elements not disclosed in Hutchinson. In claim 1, the element "...resizing current code sections..." is not disclosed in Hutchinson. The OA asserts that the cite to col. 5 lines 62-65 & col. 6 lines 2-10 (see the last paragraph above in the "cited language") discloses resizing code sections. "Resizing" requires a physical resizing of a code section (i.e., a code section is made larger or smaller, in terms of the physical space it is allocated in memory). *Arguendo*, even if Hutchinson were assumed to disclose code sections as claimed in the present disclosure, Hutchinson does not disclose resizing of code sections. Rather, Hutchinson discloses how the main program locates and then uses feature-specific code loaded after the main program was loaded. There is no disclosure in Hutchinson about resizing a code section (again, using the assumption the presently claimed code section is equivalent to Hutchinson's optional feature programs, an assumption Applicant also disagrees with but is not reached here).

Thus, each element of presently pending claim 1 is not found in Hutchinson. Likewise, claim 28 has at least the same element discussed above for claim 1, and as shown above for claim 1, Hutchinson does not disclose. Thus, each element of claim 28 is not found in Hutchinson.

Claims 29 and 58 each contain the element of a compactor that can resize current code sections (as well as many others that are not reached here). As shown above, Hutchinson does not disclose a compactor, nor does Hutchinson disclose resizing current code sections.

For claims 1, 28, 29 and 58, Hutchinson does not disclose resizing in any manner; he only discloses loading and finding feature-specific software. If the Examiner disagrees, Applicant respectfully requests specific cites in Hutchinson to *resizing* (not loading, which is a different element). Other elemental differences between Hutchinson and the presently pending claims set are not reached, but Applicant reserves the right to address these in a future correspondence as needed.

For at least the reason just discussed, the 35 USC §102 rejection based on Hutchinson is respectfully traversed.

Claims 1, 28, and 29 were asserted as anticipated by Yoshida. The language cited in Yoshida is shown below.

CITED LANGUAGE:

> FIG. 5 shows a flowchart of one embodiment of the present invention within the personal handy phone system 300 of FIG. 3 for remotely updating the application software code stored within the persistent memory 304 of cell station 102. FIG. 5 contains process 500 which starts at step 502. Step 504 directs control terminal 302 to transmit a unique preparatory signal addressed to cell station 102 via the existing network 114. Step 506 directs cell station 102 to receive the transmitted unique preparatory signal which is addressed to it. At step 506, special software code stored within ROM 306 recognizes the received unique preparatory signal as a precursor signal indicating that the software code stored within persistent memory 310 is going to be updated.
>
> Once step 506 is completed, step 508 of FIG. 5 directs cell station 102 of FIG. 3 to determine if the received unique preparatory signal is valid. One embodiment of the present invention for determining the validity of the received preparatory signal is to compare it with a valid preparatory signal stored within ROM 306. At step 508, if cell station 102 determines that the received unique preparatory signal is not valid, cell station 102 and control terminal 302 are directed to proceed to step 518 to exit process 500. At step 508, if cell station 102 determines that the received unique preparatory signal is valid, cell station 102 is directed to proceed to step 510.

The AO asserts that, amongst other things to which Applicant also respectfully disagrees, the above cites in Yoshida show *resizing* as well as a *compactor* usable for *resizing*. Applicant respectfully disagrees. Yoshida does not disclose resizing. Yoshida clearly shows a protocol used to determine if a cell phone in the field is allowed to have an updating system, and if it is, the changed software is downloaded (Yoshida's figures 4 and 5 show what Yoshida discloses: the protocol to allow a download of a revised system). Yoshida does not disclose anything about managing the downloaded software on the cell

phone as does the present disclosure. In particular, Yoshida does not disclose *resizing* of a code section, at the least. For at least this reason, the 35 USC §102 rejection based on Yoshida respectfully traversed.

For claims 1, 28, and 29, Yoshida does not disclose resizing; he only discloses a protocol to allow an authorized cell phone to download software. If the Examiner disagrees, Applicant respectfully requests specific cites in Yoshida to *resizing* (not loading, which is a different element). Other elemental differences between Yoshida and the presently pending claims set are not reached, but Applicant reserves the right to address these in a future correspondence as needed.

Each pending dependent claim (2-27, 30-57) eventually depends from one of the independent claims discussed above. Since each dependent claim inherits the claims limitations from the independent claims from which it eventually depends, for the same reasons discussed above the dependent claims are also not anticipated by either Hutchinson or Yoshida.

Conclusion

Applicant respectfully requests allowance of pending claims 1-58 as discussed above. If the Examiner has any questions or comments regarding the above Amendments and Remarks, or if the Examiner believes that a telephone conversation would facilitate prosecution, the Examiner is respectfully urged to contact the undersigned at the number listed below.

Respectfully submitted,

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